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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUAN ROJAS CONTRERAS, individually,
and on behalf of other members of the
general public similarly situated;

Plaintiff,

vs.

ASPHALT FABRIC AND ENGINEERING,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 21STCV40362

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);

FILED
Superior Court of California
County of Los Angeles

02/15/2024

David W. Slayton, Executive Officer / Clerk of Court

By: I. Arellanes Deputy

- (10) Violation of California Business
& Professions Code §§ 17200, et
seq.
(11) Violation Of Cal. Labor Code § 2699,
(Private Attorneys General Act)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JUAN ROJAS CONTRERAS (“Plaintiff”), individually, and
on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff’s First through Tenth causes of action are brought as a class action
pursuant to California Code of Civil Procedure section 382. The monetary damages and
restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and
will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California
Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all
other causes” except those given by statute to other courts. The statutes under which this
action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and
belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or
otherwise intentionally avails itself of the California market so as to render the exercise of
jurisdiction over it by California courts consistent with traditional notions of fair play and
substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant
maintains offices, has agents, employs individuals, and/or transacts business in the State of
California, County of Los Angeles. The majority of acts and omissions alleged herein relating to
Plaintiff and the other class members took place in the State of California, including the County
of Los Angeles. At all relevant times, Defendant maintained its headquarters/“nerve center”
within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff JUAN ROJAS CONTRERAS is an individual residing in the State of California.

6. Defendant ASPHALT FABRIC AND ENGINEERING, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

7. At all relevant times, Defendant ASPHALT FABRIC AND ENGINEERING, INC. was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants ASPHALT FABRIC AND ENGINEERING, INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1

1 through 100 will hereinafter collectively be referred to as “Defendants.”

2 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
3 affected the working conditions, wages, working hours, and conditions of employment of
4 Plaintiff and the other class members so as to make each of said Defendants employers liable
5 under the statutory provisions set forth herein.

6 **CLASS ACTION ALLEGATIONS**

7 12. Plaintiff brings the First through Tenth causes of action on his own behalf and
8 on behalf of all other members of the general public similarly situated, and, thus, seeks class
9 certification under California Code of Civil Procedure section 382.

10 13. The proposed class is defined as follows:

11 All current and former hourly-paid or non-exempt employees who worked for
12 any of the Defendants within the State of California at any time during the
13 period from four years preceding the filing of this Complaint to final judgment
14 and who reside in California.

15 (Subclass A.) All class members who were subject to Defendants’ practice of
16 rounding time recorded for purposes of calculating compensation for time
17 worked or for calculating meal periods.

18 14. Plaintiff reserves the right to establish additional subclasses as appropriate.

19 15. The class is ascertainable and there is a well-defined community of interest in
20 the litigation:

21 a. Numerosity: The class members are so numerous that joinder of all class
22 members is impracticable. The membership of the entire class is
23 unknown to Plaintiff at this time; however, the class is estimated to be
24 greater than fifty (50) individuals and the identity of such membership is
25 readily ascertainable by inspection of Defendants’ employment records.

26 b. Typicality: Plaintiff’s claims are typical of all other class members’ as
27 demonstrated herein. Plaintiff will fairly and adequately protect the
28 interests of the other class members with whom he has a well-defined

community of interest.

- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of

1 California for all hours worked and missed (short, late, interrupted,
2 and/or missed altogether) meal periods and rest breaks in violation of
3 California law;

4 c. Whether Defendants required Plaintiff and the other class members to
5 work over eight (8) hours per day and/or over forty (40) hours per week
6 and failed to pay the legally required overtime compensation to Plaintiff
7 and the other class members;

8 d. Whether Defendants deprived Plaintiff and the other class members of
9 meal and/or rest periods or required Plaintiff and the other class
10 members to work during meal and/or rest periods without compensation;

11 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
12 other class members for all hours worked;

13 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
14 class members within the required time upon their discharge or
15 resignation;

16 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
17 the other class members during their employment;

18 h. Whether Defendants complied with wage reporting as required by the
19 California Labor Code; including, *inter alia*, section 226;

20 i. Whether Defendants kept complete and accurate payroll records as
21 required by the California Labor Code, including, *inter alia*, section
22 1174(d);

23 j. Whether Defendants failed to reimburse Plaintiff and the other class
24 members for necessary business-related expenses and costs;

25 k. Whether Defendants' conduct was willful or reckless;

26 l. Whether Defendants engaged in unfair business practices in violation of
27 California Business & Professions Code section 17200, et seq.;

28 m. The appropriate amount of damages, restitution, and/or monetary

penalties resulting from Defendants' violation of California law; and
n. Whether Plaintiff and the other class members are entitled to
compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

17. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Los Angeles.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately May 2018 to approximately August 2018, in the State of California, County of Los Angeles.

19. Defendants hired Plaintiff, the other class members, and the Aggrieved Employees, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed meal periods and/or rest breaks.

20. Defendants had the authority to hire and terminate Plaintiff, the other class members, and the Aggrieved Employees, to set work rules and conditions governing Plaintiff, the class members, and the Aggrieved Employees' employment, and to supervise their daily employment activities.

21. Defendants exercised sufficient authority over the terms and conditions of Plaintiff, the class members, and the Aggrieved Employees' employment for them to be joint employers of Plaintiff and the other class members.

22. Defendants directly hired and paid wages and benefits to Plaintiff, the class members, and the Aggrieved Employees.

23. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

24. Plaintiff, the class members, and the Aggrieved Employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt

1 employees within the State of California. This pattern and practice involved, *inter alia*, failing
2 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest
3 breaks in violation of California law.

4 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
6 were entitled to receive certain wages for overtime compensation and that they were not
7 receiving accurate overtime compensation for all overtime hours worked.

8 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed to provide Plaintiff, the class members, and the Aggrieved Employees with all required
10 rest and meal periods during the relevant time period as required under the Industrial Welfare
11 Commission Wage Orders and thus they are entitled to any and all applicable penalties.

12 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
14 were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's,
15 the class members', and the Aggrieved Employees' regular rate of pay when a meal period was
16 missed, and they did not receive all meal periods or payment of one additional hour of pay at
17 Plaintiff's, the class members', and the Aggrieved Employees' regular rate of pay when a meal
18 period was missed.

19 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
21 were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's,
22 the class members', and the Aggrieved Employees' regular rate of pay when a rest period was
23 missed, and they did not receive all rest periods or payment of one additional hour of pay at
24 Plaintiff's, the class members', and the Aggrieved Employees' regular rate of pay when a rest
25 period was missed.

26 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
28 were entitled to receive at least minimum wages for compensation and that they were not

1 receiving at least minimum wages for all hours worked.

2 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
4 were entitled to receive all wages owed to them upon discharge or resignation, including
5 overtime and minimum wages and meal and rest period premiums, and they did not, in fact,
6 receive all such wages owed to them at the time of their discharge or resignation.

7 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
9 were entitled to receive all wages owed to them during their employment. Plaintiff, the class
10 members, and the Aggrieved Employees did not receive payment of all wages, including
11 overtime and minimum wages and meal and rest period premiums, within any time permissible
12 under California Labor Code section 204.

13 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
15 were entitled to receive complete and accurate wage statements in accordance with California
16 law, but, in fact, they did not receive complete and accurate wage statements from Defendants.
17 The deficiencies included, *inter alia*, the failure to include the total number of hours worked by
18 Plaintiff, the class members, and the Aggrieved Employees.

19 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll records
21 for Plaintiff, the class members, and the Aggrieved Employees in accordance with California
22 law, but, in fact, did not keep complete and accurate payroll records.

23 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff, the class members, and the Aggrieved Employees
25 were entitled to reimbursement for necessary business-related expenses.

26 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that they had a duty to compensate Plaintiff, the class members,
28 and the Aggrieved Employees pursuant to California law, and that Defendants had the financial

1 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
2 and falsely represented to Plaintiff, the class members, and the Aggrieved Employees that they
3 were properly denied wages, all in order to increase Defendants' profits.

4 37. During the relevant time period, Defendants failed to pay overtime wages to
5 Plaintiff, the class members, and the Aggrieved Employees for all overtime hours worked.
6 Plaintiff, the class members, and the Aggrieved Employees were required to work more than
7 eight (8) hours per day and/or forty (40) hours per week without overtime compensation for all
8 overtime hours worked.

9 38. During the relevant time period, Defendants failed to provide all requisite
10 uninterrupted meal and rest periods to Plaintiff, the class members, and the Aggrieved
11 Employees.

12 39. During the relevant time period, Defendants failed to pay Plaintiff, the class
13 members, and the Aggrieved Employees at least minimum wages for all hours worked.

14 40. During the relevant time period, Defendants failed to pay Plaintiff, the class
15 members, and the Aggrieved Employees all wages owed to them upon discharge or
16 resignation.

17 41. During the relevant time period, Defendants failed to pay Plaintiff, the class
18 members, and the Aggrieved Employees all wages within any time permissible under
19 California law, including, *inter alia*, California Labor Code section 204.

20 42. During the relevant time period, Defendants failed to provide complete or
21 accurate wage statements to Plaintiff, the class members, and the Aggrieved Employees .

22 43. During the relevant time period, Defendants failed to keep complete or accurate
23 payroll records for Plaintiff, the class members, and the Aggrieved Employees.

24 44. During the relevant time period, Defendants failed to reimburse Plaintiff, the
25 class members, and the Aggrieved Employees for all necessary business-related expenses and
26 costs.

27 45. During the relevant time period, Defendants failed to properly compensate
28 Plaintiff, the class members, and the Aggrieved Employees pursuant to California law in order

1 to increase Defendants' profits.

2 46. California Labor Code section 218 states that nothing in Article 1 of the Labor
3 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
4 due to him [or her] under this article."

5 **FIRST CAUSE OF ACTION**

6 **(Violation of California Labor Code §§ 510 and 1198)**

7 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

8 47. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
9 through 46, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 48. California Labor Code section 1198 and the applicable Industrial Welfare
12 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
13 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
14 rate of pay, depending on the number of hours worked by the person on a daily or weekly
15 basis.

16 49. Specifically, the applicable IWC Wage Order provides that Defendants are and
17 were required to pay Plaintiff and the other class members employed by Defendants, and
18 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
19 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
20 than forty (40) hours in a workweek.

21 50. The applicable IWC Wage Order further provides that Defendants are and were
22 required to pay Plaintiff and the other class members overtime compensation at a rate of two
23 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

24 51. California Labor Code section 510 codifies the right to overtime compensation
25 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
26 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
27 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
28 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day

1 of work.

2 52. During the relevant time period, Plaintiff and the other class members worked in
3 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

4 53. During the relevant time period, Defendants intentionally and willfully failed to
5 pay overtime wages owed to Plaintiff and the other class members.

6 54. Defendants' failure to pay Plaintiff and the other class members the unpaid
7 balance of overtime compensation, as required by California laws, violates the provisions of
8 California Labor Code sections 510 and 1198, and is therefore unlawful.

9 55. Pursuant to California Labor Code section 1194, Plaintiff and the other class
10 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
11 attorneys' fees.

12 **SECOND CAUSE OF ACTION**

13 **(Violation of California Labor Code §§ 226.7 and 512(a))**

14 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

15 56. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 55, and each and every part thereof with the same force and effect as though fully set
17 forth herein.

18 57. At all relevant times, the IWC Order and California Labor Code sections 226.7
19 and 512(a) were applicable to Plaintiff's and the other class members' employment by
20 Defendants.

21 58. At all relevant times, California Labor Code section 226.7 provides that no
22 employer shall require an employee to work during any meal or rest period mandated by an
23 applicable order of the California IWC.

24 59. At all relevant times, the applicable IWC Wage Order and California Labor
25 Code section 512(a) provide that an employer may not require, cause or permit an employee to
26 work for a work period of more than five (5) hours per day without providing the employee
27 with a meal period of not less than thirty (30) minutes, except that if the total work period per
28 day of the employee is no more than six (6) hours, the meal period may be waived by mutual

1 consent of both the employer and employee.

2 60. At all relevant times, the applicable IWC Wage Order and California Labor
3 Code section 512(a) further provide that an employer may not require, cause or permit an
4 employee to work for a work period of more than ten (10) hours per day without providing the
5 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
6 that if the total hours worked is no more than twelve (12) hours, the second meal period may
7 be waived by mutual consent of the employer and the employee only if the first meal period
8 was not waived.

9 61. During the relevant time period, Plaintiff and the other class members who were
10 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
11 their legally-mandated meal periods by mutual consent, were required to work for periods
12 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
13 minutes and/or rest period.

14 62. During the relevant time period, Plaintiff and the other class members who were
15 scheduled to work for a period of time in excess of six (6) hours were required to work for
16 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
17 (30) minutes and/or rest period.

18 63. During the relevant time period, Defendants intentionally and willfully required
19 Plaintiff and the other class members to work during meal periods and failed to compensate
20 Plaintiff and the other class members the full meal period premium for work performed during
21 meal periods.

22 64. During the relevant time period, Defendants failed to pay Plaintiff and the other
23 class members the full meal period premium due pursuant to California Labor Code section
24 226.7.

25 65. Defendants' conduct violates applicable IWC Wage Order and California Labor
26 Code sections 226.7 and 512(a).

27 66. Pursuant to applicable IWC Wage Order and California Labor Code section
28 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one

1 additional hour of pay at the employee's regular rate of compensation for each work day that
2 the meal or rest period is not provided.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California Labor Code § 226.7)**

5 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

6 67. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 66, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 68. At all times herein set forth, the applicable IWC Wage Order and California
10 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
11 employment by Defendants.

12 69. At all relevant times, California Labor Code section 226.7 provides that no
13 employer shall require an employee to work during any rest period mandated by an applicable
14 order of the California IWC.

15 70. At all relevant times, the applicable IWC Wage Order provides that "[e]very
16 employer shall authorize and permit all employees to take rest periods, which insofar as
17 practicable shall be in the middle of each work period" and that the "rest period time shall be
18 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
19 hours or major fraction thereof" unless the total daily work time is less than three and one-half
20 (3 ½) hours.

21 71. During the relevant time period, Defendants required Plaintiff and other class
22 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
23 rest period per each four (4) hour period worked.

24 72. During the relevant time period, Defendants willfully required Plaintiff and the
25 other class members to work during rest periods and failed to pay Plaintiff and the other class
26 members the full rest period premium for work performed during rest periods.

27 73. During the relevant time period, Defendants failed to pay Plaintiff and the other
28 class members the full rest period premium due pursuant to California Labor Code section

1 226.7.

2 74. Defendants' conduct violates applicable IWC Wage Orders and California
3 Labor Code section 226.7.

4 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section
5 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
6 additional hour of pay at the employees' regular hourly rate of compensation for each work
7 day that the rest period was not provided.

8 **FOURTH CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

10 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

11 76. Plaintiff incorporates by reference the allegations contained in paragraphs 1
12 through 75, and each and every part thereof with the same force and effect as though fully set
13 forth herein.

14 77. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
15 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
16 than the minimum so fixed is unlawful.

17 78. During the relevant time period, Defendants failed to pay minimum wage to
18 Plaintiff and the other class members as required, pursuant to California Labor Code sections
19 1194, 1197, and 1197.1.

20 79. Defendants' failure to pay Plaintiff and the other class members the minimum
21 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
22 those sections Plaintiff and the other class members are entitled to recover the unpaid balance
23 of their minimum wage compensation as well as interest, costs, and attorney's fees, and
24 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

25 80. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
26 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
27 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
28 minimum wages.

81. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

84. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

85. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

86. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

87. Plaintiff and the other class members are entitled to recover from Defendants the

1 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
2 pursuant to California Labor Code section 203.

3 **SIXTH CAUSE OF ACTION**

4 **(Violation of California Labor Code § 204)**

5 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

6 88. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 87, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 89. At all times herein set forth, California Labor Code section 204 provides that all
10 wages earned by any person in any employment between the 1st and 15th days, inclusive, of
11 any calendar month, other than those wages due upon termination of an employee, are due and
12 payable between the 16th and the 26th day of the month during which the labor was
13 performed.

14 90. At all times herein set forth, California Labor Code section 204 provides that all
15 wages earned by any person in any employment between the 16th and the last day, inclusive,
16 of any calendar month, other than those wages due upon termination of an employee, are due
17 and payable between the 1st and the 10th day of the following month.

18 91. At all times herein set forth, California Labor Code section 204 provides that all
19 wages earned for labor in excess of the normal work period shall be paid no later than the
20 payday for the next regular payroll period.

21 92. During the relevant time period, Defendants intentionally and willfully failed to
22 pay Plaintiff and the other class members all wages due to them, within any time period
23 permissible under California Labor Code section 204.

24 93. Plaintiff and the other class members are entitled to recover all remedies
25 available for violations of California Labor Code section 204.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

4 94. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 93, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 95. At all material times set forth herein, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate itemized
9 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
10 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
11 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
12 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
14 his or her social security number, (8) the name and address of the legal entity that is the
15 employer, and (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee. The deductions
17 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
18 showing the month, day, and year, and a copy of the statement or a record of the deductions
19 shall be kept on file by the employer for at least three years at the place of employment or at a
20 central location within the State of California.

21 96. Defendants have intentionally and willfully failed to provide Plaintiff and the
22 other class members with complete and accurate wage statements. The deficiencies include,
23 but are not limited to: the failure to include the total number of hours worked by Plaintiff and
24 the other class members.

25 97. As a result of Defendants' violation of California Labor Code section 226(a),
26 Plaintiff and the other class members have suffered injury and damage to their statutorily-
27 protected rights.

28 98. More specifically, Plaintiff and the other class members have been injured by

1 Defendants' intentional and willful violation of California Labor Code section 226(a) because
2 they were denied both their legal right to receive, and their protected interest in receiving,
3 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

4 99. Plaintiff and the other class members are entitled to recover from Defendants the
5 greater of their actual damages caused by Defendants' failure to comply with California Labor
6 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
7 employee.

8 100. Plaintiff and the other class members are also entitled to injunctive relief to
9 ensure compliance with this section, pursuant to California Labor Code section 226(h).

10 **EIGHTH CAUSE OF ACTION**

11 **(Violation of California Labor Code § 1174(d))**

12 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

13 101. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 100, and each and every part thereof with the same force and effect as though fully set
15 forth herein.

16 102. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
17 central location in the state or at the plants or establishments at which employees are
18 employed, payroll records showing the hours worked daily by and the wages paid to, and the
19 number of piece-rate units earned by and any applicable piece rate paid to, employees
20 employed at the respective plants or establishments. These records shall be kept in accordance
21 with rules established for this purpose by the commission, but in any case shall be kept on file
22 for not less than two years.

23 103. Defendants have intentionally and willfully failed to keep accurate and complete
24 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
25 class members.

26 104. As a result of Defendants' violation of California Labor Code section 1174(d),
27 Plaintiff and the other class members have suffered injury and damage to their statutorily-
28 protected rights.

1 105. More specifically, Plaintiff and the other class members have been injured by
2 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
3 they were denied both their legal right and protected interest, in having available, accurate and
4 complete payroll records pursuant to California Labor Code section 1174(d).

5 **NINTH CAUSE OF ACTION**

6 **(Violation of California Labor Code §§ 2800 and 2802)**

7 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

8 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1
9 through 105, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 107. Pursuant to California Labor Code sections 2800 and 2802, an employer must
12 reimburse its employee for all necessary expenditures incurred by the employee in direct
13 consequence of the discharge of his or her job duties or in direct consequence of his or her
14 obedience to the directions of the employer.

15 108. Plaintiff and the other class members incurred necessary business-related
16 expenses and costs that were not fully reimbursed by Defendants.

17 109. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
18 other class members for all necessary business-related expenses and costs.

19 110. Plaintiff and the other class members are entitled to recover from Defendants
20 their business-related expenses and costs incurred during the course and scope of their
21 employment, plus interest accrued from the date on which the employee incurred the necessary
22 expenditures at the same rate as judgments in civil actions in the State of California.

23 **TENTH CAUSE OF ACTION**

24 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

25 **(Against ASPHALT FABRIC AND ENGINEERING, INC. and DOES 1 through 100)**

26 111. Plaintiff incorporates by reference the allegations contained in paragraphs 1
27 through 110, and each and every part thereof with the same force and effect as though fully set
28 forth herein.

1 112. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
3 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public
4 interest within the meaning of Code of Civil Procedure section 1021.5.

5 113. Defendants' activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code section 17200, et seq.

8 114. A violation of California Business & Professions Code section 17200, et seq.
9 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
10 policies and practices of requiring employees, including Plaintiff and the other class members,
11 to work overtime without paying them proper compensation violate California Labor Code
12 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
13 employees, including Plaintiff and the other class members, to work through their meal and
14 rest periods without paying them proper compensation violate California Labor Code sections
15 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate
16 California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and
17 practices of failing to timely pay wages to Plaintiff and the other class members violate
18 California Labor Code sections 201, 202 and 204. Defendants also violated California Labor
19 Code sections 226(a), 1174(d), 2800 and 2802.

20 115. As a result of the herein described violations of California law, Defendants
21 unlawfully gained an unfair advantage over other businesses.

22 116. Plaintiff and the other class members have been personally injured by
23 Defendants' unlawful business acts and practices as alleged herein, including but not
24 necessarily limited to the loss of money and/or property.

25 117. Pursuant to California Business & Professions Code sections 17200, et seq.,
26 Plaintiff and the other class members are entitled to restitution of the wages withheld and
27 retained by Defendants during a period that commences four years preceding the filing of this
28 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section

1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Labor Code § 2699, Et Seq.

(Against All Defendants)

118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

119. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

120. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

121. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them. As set forth in detail above, during all times relevant to this Action, Defendants have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

Failure to Pay Overtime

122. Defendants’ failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 204, 510, 1194 and 1198.

Failure to Provide Meal Periods

123. Defendants’ failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair

activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

124. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7 and 512.

Failure to Pay Minimum Wages

125. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1194, 1197, 1197.1 and 1198.

Failure to Timely Pay Wages Upon Termination

126. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

127. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Complete and Accurate Wage Statements

128. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

129. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

130. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for

1 necessary business-related expenses and costs in accordance with California Labor Code sections
2 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
3 sections 2800 and 2802.

4 131. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
5 individually and on behalf of the Aggrieved Employees and the State of California, requests and
6 is entitled to recover penalties against Defendants for the Labor Code violations described above,
7 including but not limited to penalties under California Code of Regulations Title 8 section 11010,
8 penalties under California Labor Code sections 2699, 558, 210, 351, 1197.1, 226, 226.3, 226.8,
9 1174.5, and 1197.1, and any and all additional penalties and sums as provided by the California
10 Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an
11 amount to be shown according to proof at trial.

12 132. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
13 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
14 Workforce Development Agency for the enforcement of labor laws and education of employers
15 and employees about their rights and responsibilities and twenty-five percent (25%) to the
16 aggrieved employees.

17 133. Plaintiff has exhausted her administrative remedies pursuant to Labor Code
18 section 2699.3. On February 5, 2024, Plaintiff, through his counsel of record, filed online with
19 the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the
20 Defendants, notice of the specific provisions of the Labor Code and IWC Wage Orders that
21 Defendants have violated, including the facts and theories to support the violations, and of
22 Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee
23 required under Labor Code section 2699.3.

24 134. Further, Plaintiff is entitled to seek and recover reasonable attorneys’ fees and
25 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
26 statute.

27 **DEMAND FOR JURY TRIAL**

28 Plaintiff, individually, and on behalf of other members of the general public similarly

1 situated, requests a trial by jury.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
4 public similarly situated, prays for relief and judgment against Defendants, jointly and
5 severally, as follows:

6 **Class Certification**

- 7 1. That this action be certified as a class action;
8 2. That Plaintiff be appointed as the representative of the Class;
9 3. That counsel for Plaintiff be appointed as Class Counsel; and
10 4. That Defendants provide to Class Counsel immediately the names and most
11 current/last known contact information (address, e-mail and telephone numbers) of all class
12 members.

13 **As to the First Cause of Action**

- 14 5. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
16 all overtime wages due to Plaintiff and the other class members;
17 6. For general unpaid wages at overtime wage rates and such general and special
18 damages as may be appropriate;
19 7. For pre-judgment interest on any unpaid overtime compensation commencing
20 from the date such amounts were due;
21 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Labor Code section 1194; and
23 9. For such other and further relief as the Court may deem just and proper.

24 **As to the Second Cause of Action**

- 25 10. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
27 provide all meal periods (including second meal periods) to Plaintiff and the other class
28 members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be

appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

1 37. For pre-judgment interest on any unpaid compensation from the date such
2 amounts were due; and

3 38. For such other and further relief as the Court may deem just and proper.

4 **As to the Seventh Cause of Action**

5 39. That the Court declare, adjudge and decree that Defendants violated the record
6 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
7 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
8 wage statements thereto;

9 40. For actual, consequential and incidental losses and damages, according to proof;

10 41. For statutory penalties pursuant to California Labor Code section 226(e);

11 42. For injunctive relief to ensure compliance with this section, pursuant to
12 California Labor Code section 226(h); and

13 43. For such other and further relief as the Court may deem just and proper.

14 **As to the Eighth Cause of Action**

15 44. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
17 for Plaintiff and the other class members as required by California Labor Code section
18 1174(d);

19 45. For actual, consequential and incidental losses and damages, according to proof;

20 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

21 47. For such other and further relief as the Court may deem just and proper.

22 **As to the Ninth Cause of Action**

23 48. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other
25 class members for all necessary business-related expenses as required by California Labor
26 Code sections 2800 and 2802;

27 49. For actual, consequential and incidental losses and damages, according to proof;

28 50. For the imposition of civil penalties and/or statutory penalties;

1 51. For reasonable attorneys' fees and costs of suit incurred herein; and

2 52. For such other and further relief as the Court may deem just and proper.

3 **As to the Tenth Cause of Action**

4 53. That the Court decree, adjudge and decree that Defendants violated California
5 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
6 other class members all overtime compensation due to them, failing to provide all meal and
7 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to
8 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
9 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
10 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

11 54. For restitution of unpaid wages to Plaintiff and all the other class members and
12 all pre-judgment interest from the day such amounts were due and payable;

13 55. For the appointment of a receiver to receive, manage and distribute any and all
14 funds disgorged from Defendants and determined to have been wrongfully acquired by
15 Defendants as a result of violation of California Business and Professions Code sections
16 17200, et seq.;

17 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Code of Civil Procedure section 1021.5;

19 57. For injunctive relief to ensure compliance with this section, pursuant to
20 California Business and Professions Code sections 17200, et seq.; and

21 58. For such other and further relief as the Court may deem just and proper.

22 **As to the Eleventh Cause of Action**

23 59. For civil penalties and wages pursuant to California Labor Code sections
24 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor
25 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
26 1198, 2800 and 2802; and;

27 //

28 //

1 60. For such other and further relief as the Court may deem just and proper.
2
3

4 Dated: February 8, 2024

DOMB & RAUCHWERGER, LLP

5
6 By:



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